

**ANNUAL REPORT TO THE GENERAL
ASSEMBLY
ON TOBACCO ENFORCEMENT
January 1, 2007 thru
December 31, 2007**



DEPARTMENT OF PUBLIC SAFETY
DIVISION OF ALCOHOL AND TOBACCO CONTROL

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The Division of Alcohol and Tobacco gained responsibility for enforcement of tobacco laws on August 28, 2001, with the passage of HB 381. The Division is required to submit an annual report to the General Assembly on the effectiveness of Sections 407.925 through 407.934 in reducing tobacco possession by minors and the tobacco enforcement activities of the Division.

Tobacco Compliance Check Investigations

The Division of Alcohol and Tobacco Control continues to work diligently in its efforts to enforce the provisions of Sections 407.924 through 407.934, RSMo, and the Rules and Regulations of the Supervisor of Alcohol and Tobacco Control 11 CSR 70-3. The Division is currently the only agency charged with the responsibility to enforce the tobacco control laws of the State of Missouri. In previous years, the enforcement of tobacco laws by the Division was accomplished with surveillance type investigations. This type of enforcement does not easily measure the effectiveness of the enforcement. Compliance checks have been recognized as an excellent method to attack the problems associated with the unlawful sale or distribution of tobacco products.

The State Supervisor established mandatory guidelines for the use of minors in investigations by the state, county, municipal, or other local authorities in 11 CSR 70-3. These regulations became effective February 28, 2002. The Division can take action against any non-compliant vendor if the mandatory guidelines are followed. The mandatory guideline regulations do not create a local preemption; however, the guidelines must be followed for the Supervisor to take action against noncompliant vendors.

The Division of Alcohol and Tobacco Control requires each of its three Districts to complete twenty compliance checks a month. Should the retailer be in non-compliance and cited for violation of Sale or Supply of Tobacco Products to a minor, a second compliance check or re-inspection will be done at that retail establishment within 60 days to determine compliance. The re-inspection check is in addition to the twenty compliance checks scheduled for the month.

Reflected below are the statistics resulting from the Compliance Checks by the Division of Alcohol and Tobacco Control that began March 1, 2005:

TOBACCO COMPLAINTS

FY 2003	27
FY 2004	35
FY 2005	16
FY 2006	4
FY 2007	14

TOBACCO ARRESTS

	<u>MIP</u>	<u>SALE TO MINOR</u>	<u>TOTAL</u>
FY 2002	201	21	222
FY 2003	395	10	405
FY 2004	162	8	170
FY 2005	127	80	207
FY 2006	50	125	175
FY 2007	21	53	74

SERVER TRAINING/TOBACCO INCLUDED

	<u>NUMBER OF TRAINING SESSIONS</u>	<u>NUMBER OF PEOPLE TRAINED</u>
FY 2003	66	1878
FY 2004	135	2396
FY 2005	143	2977
FY 2006	173	3955
FY 2007	247	5060

NUMBER OF TOBACCO COMPLIANCE CHECKS

Compliant Retailers	105	Compliant 67%
Non-Compliant Retailers	52	Non-Compliant 33%
Retailers Closed/Out of Business	3	
Total Number of Retailers Checked	160	
Total Number of Counties Checked	16	

Dispositions of Violations of Sale to Minor

Retailers Exempt from Penalties	12
Retailers Receiving Letters of Reprimand	30
Retailers Receiving Suspension	2
Retailers Having Pending Dispositions	7
Retailers Closed Business or Sold Business	1

<u>Statistics for Sales of Tobacco Products to a Minor</u>	<u>Arrests</u>
Female over the age of 30 – sale to a minor	18
Females under the age of 30 – sale to a minor	14
Males over the age of 30 – sale to a minor	11
Males under the age of 30 – sale to a minor	9
Total Arrests (Section 407.931.3)	52

The tobacco retailers that were non-compliant were cited for the sale of tobacco products to minors and sent letters indicating they have violated the tobacco law. All first offense violations allow retailers to verify they have had Division approved training on the tobacco laws. The law states that training must be in place prior to the violation and the retailer must verify that the employee has attended training. The retailers exempt from reprimands were based upon the verification that an approved training on the tobacco laws was in place or the employee was terminated from employment. Current law allows a tobacco retailer up to five violations before the Division of Alcohol and Tobacco Control can order a suspension of sale of tobacco products.

In addition, The Division meets with prosecutors to encourage aggressive and consistent prosecution of tobacco-related offenses. As a result, prosecutors are showing an increased willingness to prosecute tobacco-related offenses. Continued joint cooperation between the Division's enforcement personnel and the prosecutors will ensure the success of the tobacco enforcement program. Following are statistics on the disposition of the above sale of tobacco products to minor charges:

Sale of Tobacco Products to Minor-(Section 407.931.3)

- 12 Guilty dispositions for the Sale of Tobacco Products to Minors
(\$1000.00 in fines collected by the Courts)
 - (2) Cases Defendant received 6 Months Probation
 - (1) Case Defendant Received 1 Year Probation
- 2 Warrant Status for Failure to Appear
 - 1 Diversion
- 0 Not Guilty Dispositions for the Sale of Tobacco Products to Minors
- 3 Dismissed Cases
- 29 Pending Dispositions
 - 3 Cases Not Filed
 - 2 Cases No Records Found

52 Total

The dispositions on many of the charges are unknown at this time as the County Prosecutors and or Circuit Clerks do not always send dispositions to the Division. The Division is attempting to determine dispositions on all charges.

Enforcement Activity / Minors

The Agents perform alcohol enforcement in conjunction with tobacco enforcement. Any time an Agent works in the field, he investigates for both alcohol and tobacco violations. With regard to other minor tobacco-related offenses such as Possession or Attempt to Purchase Tobacco Products by a Minor, the following information is the Division's enforcement activity:

Possession /Attempt to Purchase Tobacco by a Minor - (Section 407.933.3)

- 7 Guilty Dispositions for the Possession/Attempt to Purchase Tobacco by a Minor (\$241.00 in fines collected by the Courts)
- 1 Warrant Issued for Failure to Appear
- 0 Not Guilty Dispositions for the Possession/Attempt to Purchase Tobacco by a Minor
- 2 Juveniles Referred to Juvenile Court
- 12 Unknown Dispositions

Misrepresentation of Age to Purchase Tobacco-(Section 407.933.2)

No Arrests

Unlawful Sale of Individual Cigarette- (Section 407.931.3)

No Arrests

As noted above, the dispositions on many of the arrests are unknown as the County Prosecutors and or Circuit Clerks have not sent dispositions to the Division at this time.

Divisions Other Logged Tobacco Activity

The Division of Alcohol and Tobacco Control has limited resources for law enforcement of strictly youth access to tobacco laws. Since FY'2003, the Division has lost eighteen of fifty-six (32%) enforcement positions and closed three of six District offices. The Division receives \$141,620 from the Healthy Family Trust Funds for tobacco enforcement. The monies received from the

Healthy Family Trust Fund funds one tobacco program manager and two clerical employees. The Tobacco Program Manager recruits the minors for compliance checks, reviews all the tobacco compliance checks, and monitors all tobacco violations, updates tobacco training information and coordinates current tobacco retailer list with the Department of Mental Health, Division of Alcohol and Drug Abuse, and the Missouri Department of Revenue. The clerical employees enter the retailer lists, data on retailers who are compliant and the tobacco arrest and disposition data. The Agents doing the Field Enforcement are funded through General Revenue. The Division performs Routine Inspections, Routine Investigations and Special Investigations of vendors/retailers, along with Server Training. It should again be noted that the numbers reflected on these activities are joint tobacco and alcohol enforcement. The majority of retailers that sell alcohol also sell tobacco products. This allows the Agents to complete both inspections at the same time and allows quality contact with the retailers to answer questions regarding tobacco issues along with alcohol concerns. Following are alcohol and tobacco enforcement activities for the year:

Alcohol and Tobacco Enforcement Activities January-December 2007

	Kansas City	Jefferson City	St. Louis	Total
Routine Inspections	1,618	931	2,643	5,292
Routine Investigations	5,610	3,327	6,355	15,392
Special Investigations	571	340	1,448	2,359
Public Relations	1,627	805	2,236	2,770
Badges in Business	193	69	340	379
Server Training	108	22	117	247
No. of Individuals Trained	1,493	495	3,072	5,060

The Division was able to identify over 7,500 vendors of tobacco products in the state. This was accomplished by personal visits to the vendors business, working with the Department of Mental Health, Division of Alcohol and Drug Abuse, and the Missouri Department of Revenue. These lists are incomplete because businesses are not required to register as a seller of tobacco products. It is difficult to identify all retailers and maintain an accurate list when licensing or registration is not statutorily mandated.

Synar Amendment

The Center for Substance Abuse Prevention (CSAP) oversees implementation of the Synar Amendment, which requires States to have laws in place prohibiting the sale and distribution of tobacco products to persons under 18 and to enforce

those laws effectively. States are to achieve a maximum sales-to-minors rate of not greater than 20 percent. Missouri was awarded \$26,384,412 in FFY05 through the Substance Abuse Prevention and Treatment (SAPT) Block Grant. The SAPT Block Grant amount for FY2006 was \$26,062,300. The SAPT Block Grant amount for FY 2007 is \$26,067,598. If the state fails to meet the Synar regulations, it stands to lose 40% of its SAPT funding.

The Department of Mental Health, Division of Alcohol and Drug Abuse were given the responsibility for enforcing Synar Regulations. The Division of Alcohol and Tobacco Control was given the responsibility of enforcing the Missouri Statutory Tobacco Laws.

Conclusion

In closing, we continue to participate as a member of the Missouri Comprehensive Tobacco Use Prevention Steering Committee. This committee has completed a strategic plan that will guide the future of tobacco related issues in regards to health. The Division of Alcohol and Tobacco Control is the enforcement component of the overall approach to the comprehensive tobacco program. The use of compliance checks is an enforcement tool the Division can use to determine noncompliant tobacco retailers and serves as a deterrent for violators. The further expansion of compliance checks will logically lower the percentage of non-compliant tobacco vendors, thereby allowing the state to achieve a maximum sales-to-minors rate of not greater than 20 percent and protecting the SAPT Block Funding Grant.